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No. 94-1865

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

FIRST PACIFIC BANK and
FIRST PACIFIC BANCORP, INC.,

Petitioners,

v.

JAMES E. GILLERAN, SUPERINTENDENT OF BANKS,
CALIFORNIA STATE BANKING DEPARTMENT, and
FEDERAL DEPOSIT INSURANCE CORPORATION,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

As applied to petitioners, a closed bank and its holding company, does the summary judgment procedure provided for in rule 56 of the Federal Rules of Civil Procedure comply with due process? More specifically, were petitioners denied due process by the granting of summary judgment against them based upon the closed bank's own records, when petitioners never sought discovery from the post-closure custodian of the closed bank's records?

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Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondents Conrad W. Hewitt, current successor to James E. Gilleran, Superintendent of Banks of the State of California,[1] and the California State Banking Department, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by First Pacific Bank and

[1] Conrad E. Hewitt took office as Superintendent of Banks on May 1, 1995.

First Pacific Bancorp, Inc. (hereinafter referred to as "Petitioners").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the constitutional and statutory provisions cited by Petitioners at pages 2 and 3 of the Petition for Certiorari, Respondents cite the following provisions.

Section 118 of the California Financial Code provides:

> "(a) All references in this division and in Division 1 (commencing with Section 100), Title 1 of the Corporations Code to financial statements, balance sheets, income statements and statements of changes in financial position of a bank and all references to assets, liabilities, earnings, retained earnings, shareholders' equity, and similar accounting items of a bank mean such financial statements or such items prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present, subject to any specific accounting treatment required by any provision of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, of this division, or of any regulation or order issued under this division.
>
> "(b) The superintendent may, by regulation or order, require that any financial statement or accounting item of a bank be prepared or determined in a manner other than in conformity with generally accepted accounting principles if

> he finds that such other manner is necessary or appropriate to carry out the purposes or provisions of this division."

Section 134 of the California Financial Code provides:

> "(a) 'Contributed capital' means all of shareholders' equity other than retained earnings. However, nothing in this subdivision shall prohibit a bank from transferring amounts from time to time from its retained earnings to its contributed capital, subject to any applicable statutes, regulations, and generally accepted accounting principles.
>
> "(b) For purposes of this division, the contributed capital of a bank shall be deemed to be impaired whenever such bank has deficit retained earnings in an amount exceeding 40 percent of such contributed capital."

Section 3221 of the California Financial Code provides:

> "The superintendent, when he has taken possession of the property and assets of a closed bank for the purpose of liquidation and if he deems it advisable, may tender to the [Federal Deposit Insurance] corporation the appointment as receiver of such bank."

Federal Rules of Civil Procedure Rule 56, Summary Judgment, is set forth on Appendix pages 1a through 3a.

STATEMENT OF THE CASE

California Respondents are not in agreement with the Statement of the Case as presented by Petitioners.

Petitioners portray themselves as innocent victims of abrupt, arbitrary and baseless action by the Superintendent. In sharp contrast to Petitioners' assertions that they had no notice or opportunity to be heard by the Superintendent stands the 15,000-plus page Administrative Record which is replete with evidence of pre-closure meetings and other communications between the Superintendent and the management and Board of Directors of First Pacific Bank (hereinafter referred to as the "Bank") regarding the Bank's financial condition, the remedial actions which the Bank needed to take, and the potential consequences of failure to take such actions.

As reflected in the Order Taking Possession of the Property and Business of the Bank, the Superintendent had determined that many of the Bank's loans and other assets had to be written down to reflect a fair representation of their value. The Bank and its directors were notified both orally and in writing that the Bank needed a capital infusion in excess of $9,000,000.00 in order to avert serious action by the Superintendent.

On August 10, 1990, after that extensive consultation and communication with the Bank, the Superintendent of Banks of the State of California issued and served an order taking possession of the property and business of the Bank followed by the issuance and service of an order that the Bank be liquidated. Within a few minutes after service of those orders, pursuant to California Financial Code section 3221, the Superintendent tendered the appointment as receiver of the Bank to the Federal Deposit Insurance Corporation (hereinafter referred to as the "FDIC"), which tender was thereupon accepted by the FDIC.

On August 20, 1990, Petitioners timely filed an action under California Financial Code section 3101, challenging the Superintendent's closure of the Bank. Petitioners did not name the FDIC as a defendant in the proceeding at that point.

On September 4 and 26, 1990, Petitioners served discovery requests on the Superintendent.

On September 28, 1990, the Superintendent filed a demurrer based upon the Bank's failure to name the FDIC as an indispensable party defendant without whom the action could not proceed.

On October 9, 1990, the Superintendent lodged the administrative record with the Superior Court.

On November 1, 1990, Petitioners amended their action to add the FDIC as a defendant.

On November 14, 1990, the Superintendent filed a motion for summary judgment in the Los Angeles County Superior Court. This motion sought summary judgment based on only one independent statutory ground (impairment of contributed capital) for closure; the motion was supported solely by entries contained in the Bank's own records. The other bases for the Superintendent's administrative action were not included in this motion for summary judgment. On the same day, Petitioners filed a motion to compel their earlier discovery request, which named only the Superintendent and which did not seek discovery of the Bank's own records, which were in the custody of the FDIC as liquidator of the property and business of the Bank.

On December 3, 1990, the Superintendent and Petitioners stipulated to extend the motion hearing dates on Petitioner's discovery motion, Petitioner's then pending motion to stay liquidation or for preliminary injunction, and the Superintendent's summary judgment motion, together with the time for the Superintendent to answer Petitioner's first amended complaint.

On December 3, 1990, the FDIC removed the case to the United States District Court for the Central District of California pursuant to 12 U.S.C. § 1819(B)(2)(b).

On February 11, 1991, the district court denied Petitioners' motion to remand the case back to the Los Angeles County Superior Court.

On March 4, 1991, the Superintendent renoticed his motion for summary judgment in the district court as originally filed in the Los Angeles Superior Court.

On March 22, 1991, without changing the scope of their discovery request and without requesting any discovery from the FDIC, Petitioners renoticed their motion for an order granting discovery.

On March 25, 1991, the Superintendent and Petitioners stipulated to continue the date for hearing on the Superintendent's summary judgment motion to April 22, 1991, the date then set for the hearing on Petitioner's Motion for Order Granting Discovery.

On April 8, 1991, the Superintendent filed opposition to Petitioners' discovery motion.

Both matters came on for hearing in the district court on May 6, 1991. The court suggested that the disposition of the motion for summary judgment precede the other

motions, since, if summary judgment were granted, there would be no reason to rule on the other motions. When the court inquired as to whether this was correct,[2] Petitioners did not offer any response and did not suggest in any way that the discovery motion had a bearing upon and should be decided before the motion for summary judgment.

On May 15, 1991, the district court denied the Superintendent's motion for summary judgment without prejudice and allowed renewal of the Superintendent's motion for summary judgment. (See, Petition, page 27a.)

On May 31, 1991, the Superintendent renewed his motion for summary judgment.

On July 3, 1991, the district court granted the Superintendent's renewed motion for summary judgment. (See, Petition, pages 28a-35a.)

The Ninth Circuit Court of Appeals affirmed the United States District Court's grant of a motion for summary judgment in favor of Respondents herein. In doing so, the Court of Appeals held, *inter alia*, that the Superintendent was justified in taking possession of the Bank when the Bank's own financial statements demonstrated

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[2] "THE COURT: Well, just hold up a moment, because my suggestion is this: I would imagine that the disposition of the Summary Judgment motion, if it is granted, there is no need to visit the other motions. If it's denied then, of course, one must visit the other motions; correct?" Reporter's Transcript of Proceedings, United States District Court, Central District of California, May 6, 1991.

that its contributed capital was impaired;[3] that establishment of that justification through the summary judgment process was appropriate in that it afforded the Bank an opportunity to present evidence and was a judgment on the merits; and that because of the Bank's failure to seek discovery from the FDIC, when the Bank knew the FDIC was in possession of the records in issue, the district court's entry of summary judgment without ruling on the Bank's motion for discovery was appropriate.

SUMMARY OF THE ARGUMENT

Petitioners appear to want this Court to decide whether summary judgment is generally appropriate in challenges to regulatory closures of financial institutions. Due to the special nature of the facts herein, this case is an inappropriate vehicle for such an inquiry.

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[3] Petitioners continue to argue (Petition, page 16) as if the Bank's closure was finally confirmed on an " 'extremely small margin of error.' " While the district court held that the contributed capital was impaired only by a margin of $40,000, the Ninth Circuit Court of Appeals held that, contrary to the district court's approach, an $844,000 capital note was not part of shareholders' equity or GAAP contributed capital, thus establishing a broad margin of impairment under the California statutory standard. Petition, pages 9a through 12a. The question presented to this Court by Petitioners does not challenge the appellate court's holding regarding the capital note nor the appellate court's determination that the Superintendent's evidence was sufficient to support a holding that the Bank's contributed capital was impaired.

The Superintendent could have proceeded to trial in this case on all of the grounds for closure which had been developed in the immense administrative record. In order to avoid such protracted litigation, the Superintendent chose to move for summary judgment on a very narrow and straightforward issue: whether the Bank's contributed capital was impaired according to the statutory definition, based upon nothing but the Bank's own books and records. If it was, as the courts below later found it to be, then all inquiry into the propriety of the Bank's closure was properly at an end.[4] All the Bank had to do to avert that summary judgment was to establish the existence of a genuine issue of material fact. The Bank had every opportunity to secure and present evidence to this effect, which it simply failed to do.

To be sure, Petitioners filed a motion to compel discovery which was never heard by the court. However, their actions with regard to that motion, including their failure to object to the district court's proposal that the summary judgment motion be decided first, demonstrate

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[4] Under this Court's rule 14.1 (a), "[o]nly the questions set forth in the petition, or fairly included therein, will be considered by the Court." Since the question presented to this Court by Petitioners does not challenge the appellate court's determination that the Superintendent's evidence was sufficient to support a holding that the Bank's contributed capital was impaired, there is no need to complicate this opposition with detailed explanations of what constitutes such impairment of contributed capital and how the Superintendent's evidence supported the appellate court's holding that such impairment was established.

clearly that the discovery motion's purpose was to aid petitioners in obtaining evidence to present at a plenary hearing, one which would take place only if summary judgment were denied. In the meantime, Petitioners entirely failed to seek evidence from the Bank's books and records which they knew to be in the hands of the FDIC as liquidator of the Bank's property and business.

The Ninth Circuit Court of Appeals, in a holding which is not in conflict with any decision of any other circuit court of appeals, very properly concluded that under the specific factual context of this case Petitioners had not been deprived of due process in having summary judgment entered against them. Whether due process might require plenary hearing in another case involving the closure of a financial institution is a question which is not properly before this Court.

REASONS FOR DENYING THE WRIT

I.

THE NINTH CIRCUIT COURT OF APPEALS' DECISION IS NOT IN CONFLICT WITH THE DECISION OF ANY OTHER UNITED STATES COURT OF APPEALS

Petitioners refer (Petition, page 15) to a purported "divergence of judicial opinion" on the issue they present. But the cases they cite are district court cases which are not inconsistent with the challenged holding of the

Ninth Circuit Court of Appeals.[5] There is no conflict with the decision of any other court of appeals; in fact,

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[5] Petitioners' citation to *Lincoln Sav. & Loan Ass'n v. Wall*, 743 F. Supp. 901 (D.D.C. 1990) (Petition, pages 17-18) in support of a "wide-ranging evidentiary hearing" overstates the case. There, the district court in a footnote to its opinion (note 3, page 904) was referring to the hearing which was held to determine the completeness of the administrative record as opposed to a plenary hearing to which Petitioners claim they are entitled. In *Telegraph Sav. & Loan Ass'n v. FSLIC*, 703 F.2d 1019 (7th Cir. 1983), cert. denied, 464 U.S. 992 (1983), the appellate court *affirmed* the trial court's (*Telegraph Sav. & Loan Ass'n v. FSLIC*, 564 F. Supp. 862 (N.D. Ill. 1981)) *grant* of partial summary judgment and the limitation of the trial to the remaining issue of the insolvency of the institution under the "book net worth test" in a bench trial. This process is analogous to the instant case with the exception that in the instant case an independently sufficient ground for closure of the Bank was clear on the face of the Bank's own books. Petitioners' reliance upon *San Marino Sav. & Loan Ass'n v. FHLBB*, 605 F. Supp. 502 (C.D. Cal. 1984), is inapposite, since *San Marino* was not a summary judgment case. The fact that a trial was held is immaterial when no motion for summary judgment was made.

Petitioners themselves cite several cases in which the court in fact granted full summary judgment to the regulator. *Marrietta Franklin Sec. Co. v. Muldoon*, 770 F. Supp. 1212 (S.D. Ohio 1991), appeal dismissed, 972 F.2d 128 (6th Cir. 1992) (Petition, page 17); *Collie v. FHLBB*, 642 F. Supp. 1147 (N.D. Ill. 1986) (Petition, page 18); *Gibraltar Sav. v. Ryan*, 772 F Supp. 1290 (D.D.C. 1991) (Petition, page 19). In none of the cases cited by Petitioners does the court opine that summary judgment is not a constitutionally permitted procedure in challenges to closure of financial institutions. Certainly none of those cases even deals with the context of this case, wherein the Ninth Circuit Court of Appeals has affirmed summary judgment confirming the seizure of a bank "when the Bank's

this case has none of the considerations enumerated in rule 10 of this Court as reasons for the granting of certiorari.

II.

PETITIONERS SLEPT ON THEIR DISCOVERY RIGHTS AND ARE BARRED FROM ASSERTING THEIR OWN INACTIVITY AS AN EXCUSE

Throughout the Petition, constant reference is made to Petitioners' alleged lack of opportunity to obtain information supposedly vital to their opposition to the motion for summary judgment. At the outset, it is important to note that the only source of such information to which Petitioners make even oblique reference is the accounting records of the Bank. The Superintendent did not possess or control such information and at no time during the pendency of these proceedings has the Superintendent done so. The Bank's accounting records have at all relevant times been in the sole possession and control of the FDIC, a circumstance well known to Petitioners.

The record is replete with references to attempts by Petitioners to range far and wide in their requests directed to the Superintendent for information and documents which are beyond the scope of any issues which would be properly before the court even if a plenary trial were held. No matter how many times Petitioners mention these attempts, however, they still have no bearing

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own financial statements demonstrate that its contributed capital is impaired (citation)" (Petition, page 13a), thus establishing an independently sufficient ground for closure.

on Petitioners' lack of diligence in obtaining the accounting information which they speculate would have aided them in opposing the summary judgment motion. At no time during the interval between November 14, 1990, the date upon which the Superintendent filed the summary judgment motion, and the entry of the Order Granting Defendant's Renewed Motion for Summary Judgment on July 12, 1991, did Petitioners serve discovery seeking the production of or access to the accounting records of the Bank in order to oppose the summary judgment motion.

In *California Union Ins. v. American Diversified Sav.*, 914 F.2d 1271 (9th Cir. 1990), cert. den., 498 U.S. 1088 (1991), the court, in the context of litigation arising out of the collapse and subsequent takeover of a failed thrift institution, examined the issue of whether it was an abuse of discretion for the district court to decide a summary judgment motion without allowing additional time for discovery. The appellate court held that the district court did not abuse its discretion in granting a summary judgment motion because continuance was within the discretion of the district court and that denying discovery was not an abuse of discretion where there had been a failure diligently to pursue discovery. *Id.* at 1278.

As applied to the instant case, Petitioners slept for eight months on their general discovery requests; failed to seek a continuance in order to conduct discovery specifically related to the summary judgment motion; failed to seek any discovery from the FDIC, which the Bank should have known had custody of the accounting records of the Bank; and failed to object to the district court's proceeding to hear the summary judgment motion

prior to addressing Petitioners' general discovery requests when the district court made inquiry regarding such procedure.

The significance of the foregoing is that the general discovery requests promulgated by Petitioners while they were in the Los Angeles Superior Court were directed to their preparation for a plenary trial of all of the issues raised in their First Amended Complaint, as opposed to and in contrast with seeking specific discovery of the Bank's accounting records from the FDIC in order to oppose the summary judgment motion as it was heard in the district court.

The objective reality is that, as detailed *supra*, Petitioners cooperated in the creation of a timing schedule the result of which was that any order of the court regarding their discovery requests would come at a time when it would not be of aid to them in opposing the Superintendent's motion for summary judgment. Any order issued by the court in their favor in response to their discovery motion would have been issued at a time when all briefing on the Superintendent's motion for summary judgment had been completed.

Now, before this Court, Petitioners belatedly argue that they were denied discovery as a means of opposing the summary judgment motion. Petitioners' argument has no merit.

Rule 56(f) of the Federal Rules of Civil Procedure provides the opportunity to establish the need for discovery in order to oppose a motion for summary judgment.

In *Hudson River Sloop Clearwater v. Dept. of Navy*, 891 F.2d 414 (2nd Cir. 1989), the court considered the claim that summary judgment should not have been granted by the district court where the non-moving parties requested time in which to conduct discovery pursuant to rule 56(f). In affirming the district court's grant of summary judgment the appellate court, finding the appellant's affidavit to be deficient, held that:

> "Thus, a party seeking such discovery must file an affidavit explaining (1) what facts are sought and how they are to be obtained, (2) how those facts are reasonably expected to create a genuine issue of material fact, (3) what effort the affiant has made to obtain them, and (4) why the affiant was unsuccessful in those efforts [citation]." Id. at 422.

Petitioners failed to act even though it was clearly and unequivocally pointed out to them by the Superintendent that this was the procedure to be followed in opposing the motion for summary judgment. (See excerpt from Opposition to Plaintiffs' Motion for Order Granting Discovery, pages 4a and 5a of the appendix attached to this opposition.) In the instant proceedings Petitioners cannot claim ignorance of the procedural prerequisites with which they should have complied but chose to ignore.

The fact is that Petitioners *never supplemented either their motion or their discovery requests*. In the instant case the summary judgment motion was served on Petitioners on November 14, 1990. The district court's order granting summary judgment was filed on July 8, 1991, and entered on July 12, 1991. During the approximately eight months

that the summary judgment motion was pending, Petitioners failed to move to obtain the accounting records of the Bank from the FDIC as required by rule 56(f) for the purpose of opposing the summary judgment motion.

By itself, Petitioners' failure to file a motion under rule 56(f) would be sufficient to support the summary judgment against petitioners' belated complaints regarding discovery *Paddington Partners v. Bouchard*, 34 F.3d 1132 (2d Cir. 1994). But that failure is only one of Petitioners' failures even to attempt to preserve the rights they now assert. Petitioners did not in any way try to gain access to the Bank's records which were in the custody of the FDIC; nor did they file a motion to obtain additional time (in addition to the eight months between receipt of the summary judgment motion and its ultimate disposition) in which to obtain discovery of the accounting records of the Bank; nor did they file any affidavit purporting to describe any efforts that were made to obtain the accounting records of the Bank. Finally, Petitioners remained silent when the district court inquired as to whether the court should proceed to decide the summary judgment motion before considering Petitioners' discovery motion.

The record demonstrates that Petitioners slept on their rights. Accordingly, the district court did not abuse its discretion in proceeding to hear and decide the summary judgment motion.

III.

PETITIONERS WERE ACCORDED A HEARING ON THE MERITS AS REQUIRED BY THE CALIFORNIA FINANCIAL CODE AND DUE PROCESS OF LAW

Petitioners assert (Petition, page 19) that the granting of the summary judgment motion denied Petitioners a post-deprivation hearing "on the merits" which would otherwise have been provided to them under the provisions of section 3101 of the California Financial Code. Section 3101 provides for a review by the Superior Court of the Superintendent's decision to take possession of the property and business of the Bank. The statute states in relevant part, "The court . . . after a hearing and a determination of the facts upon the merits may dismiss . . . " In this case there were two district court hearings with extensive briefing, declarations and oral arguments in which the court examined the facts presented and upon the merits entered judgment. These were hearings of the type called for in the language of the statute.

In an apparent attempt to pique the interest of this Court in reviewing the proceedings before the lower courts in this matter, Petitioners sprinkle among their arguments discussion and citations related to the standard of review and scope of hearing applicable to evidentiary hearings in financial institution closure challenges. They suggest that there is disagreement among the cases which have addressed these standard and scope issues.

Some district courts may disagree as to what scope of hearing is required in contexts other than the context of this case, but Petitioners have presented no court decision at any level which conflicts with the holding of the Ninth

Circuit Court of Appeals in this case. (See discussion *supra* at pages 11-12 and note 5.) The issues presented in the cases relied upon by Petitioners are simply not relevant to the instant case. If the summary judgment procedure followed in this case by the district court and affirmed by the Ninth Circuit Court of Appeals satisfies the constitutional due process requirements, as the Superintendent vigorously asserts that it does, issues related to an evidentiary hearing never arise.

Ever since the decision in *Fidelity Deposit Co. of Maryland v. U.S.*, 187 U.S. 315 (1902), 23 S.Ct. 120, 122, 47 L.Ed. 194, 197-98, it has been and continues to be the law that summary judgment does not violate the non-moving party's right to trial by jury in cases that would otherwise fall within that guarantee. All the more so here, where the statutory right is only to a hearing before a judge. (See also, Wright, Miller & Kane, *Federal Practice and Procedure*, Civil 2d § 2714 and cases cited.)

In the instant proceedings the evidence before the district court established that the Bank's contributed capital was statutorily impaired. In *Biscayne Fed. S. & L. v. Federal Home Loan Bank Bd.*, 720 F.2d 1499, 1505 (11th Cir. 1983), the court held that once the statutory grounds for receivership have been found to exist ". . . judicial inquiry ends!". In the instant case the district court examined the declarations and evidence before it and determined that a statutory ground for closure existed based on the Bank's own records. There was, therefore, no need for the district court to hear any additional evidence regarding the millions of dollars in required loan writedowns and other adjustments to over-valued assets carried on the books of the Bank which would show that the Bank's contributed

capital was impaired to a far greater extent than that shown on its own books. Petitioners were thus afforded the " . . . hearing and a determination of the facts upon the merits . . . " required by California Financial Code section 3101.

This Court in *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970), articulated the standard for due process when it stated: " 'The fundamental requisite of due process of law is the opportunity to be heard.' [citation]." In *Woods v. Federal Home Loan Bank Bd.*, 826 F.2d 1400, 1410-1413 (5th Cir. 1987), cert. denied, 485 U.S. 959 (1988), the court examined and rejected the same type of due process arguments as are advanced by Petitioners in this case. Here, Petitioners were given notice and accorded the opportunity to be heard and present all arguments bearing upon the issues raised in the summary judgment motion in two separate hearings. The result in the instant case was determined by the deficiencies in the Bank's financial condition as shown by its own records rather than due to any defect in the hearing process accorded to Petitioners. The district court reviewed the evidence presented and determined, in accordance with the summary judgment standards set forth in *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986), that Petitioners had failed to meet the burden of showing that a fair minded jury could return a verdict in favor of Petitioners on the evidence presented.[6] The Ninth Circuit

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[6] The Superintendent disagrees with Petitioners' contention (Petition, page 8) that various declarations from the Bank demonstrated that there were genuine factual issues regarding whether the Bank's contributed capital was impaired. As noted by the Ninth Circuit in its opinion (Petition, page 8a) "Nowhere in those declarations, however, is there a statement that including loan loss reserves and deferred fees in deficit retained

Court of Appeals properly determined that summary judgment against Petitioners was fully appropriate under the particular context of this case. It follows that the Petition for Certiorari should be denied in this case.

CONCLUSION

Conrad W. Hewitt, current successor to James E. Gilleran, the California Superintendent of Banks, and the California State Banking Department pray that this Court deny First Pacific Bank and First Pacific Bancorp, Inc.'s Petition for Writ of Certiorari, because the case presents no issue appropriate for the Court's review, and because the lower courts' holdings were not in error.

Respectfully submitted,

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earnings is consistent with GAAP [Generally Accepted Accounting Principles]," as is required by section 118 of the California Financial Code.